IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 328 OF 1999

Shri Deepak Vishwanath Prabhu,
through his duly constituted
Power of Attorney and father,
Shri Vishwanath R. Prbhu,
r/o Tisk, Usgao, Ponda, Goa. ... Petitioner

Versus

1. State of Goa, through its
Chief Secretary, having
office at Secretariat,
Panaji, Goa,

2. The Under Secretary
(Revenue), Government of
Goa, having office at
Secretariat, Panaji, Goa,

3. The Land Acquisition Officer
& Dy. Collector (SDO), Ponda
Sub-Division, Ponda, Goa,

4. The Village Panchayat of
Usgao-Ganje, through its
Secretary, having office
at Tisk, Usgao, Goa,

5. Shri Ramnath Ganesh Dangi,
Panch of Village Panchayat
of Usgao-Ganje, r/o Tisk,
Usgao, Goa, and

6. Comunidade of Usgao, through
its Attorney, having office
at Tisk, Usgao, Goa. ... Respondents.

Shri M. S. Sonak, advocate for the petitioner.

Shri G. V. Tamba, Additional Government Advocate for respondent nos.1 to 3.

Shri J. A. Lobo, advocate for respondent no.4.

Shri V. P.Thali, advocate for respondent no.5.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE: 17th March, 2004.

ORAL JUDGMENT (Per Hardas, J.)

The petitioner in this petition seeks for quashing

and setting aside of the Section 4 Notification dated 9th October, 1998 and a declaration under Section 6 dated 26th October, 1998, seeking to acquire 10,000 sq. mts. from survey no. 223/1 belonging to the petitioner.

2. The ground on which the said acquisition is challenged is that acquisition has been actuated at the behest of respondent no.5 and that the acquisition of the land is for the purpose of construction of a crematorium, which would be in the heart of the village. The Government has sought to acquire 10,000 sq. mts. of land for the construction of a crematorium in the village of Usgao-Ganje. It appears that the Village Panchayat of Usgao-Ganje had passed a resolution on 19th April, 1997, requesting the Government to acquired 10,000 sq. mts. of the land of the petitioner for construction of the crematorium. Thereafter, Notification under Section 4 dated 9th October, 1998 came to be issued. The petitioner in the enquiry under Section 5A had submitted objections and thereafter, filed the petition. During the pendency of the petition, declaration under Section 6 of the Land Acquisition Act, 1947, dated 26th October, 1999 came to be issued. By way of amendment, the said declaration under Section 6 has also been challenged in the petition.

3. The respondent no.4 had filed an affidavit in this Court dated 20th June, 2000, in which it is stated that

the Gram Sabha and the Panchayat had passed a resolution that the acquisition should be dropped since it was not in the interest of the Village Panchayat. The affidavit further stated that a request for refund of Rs.9,94,000/-, which had been deposited towards acquisition, was forwarded. Alongwith the affidavit, the resolution of the Panchayat is also annexed. In the affidavit filed by Shri A. V. Chikkodi, Deputy Collector and Land Acquisition Officer, dated 7th February, 2000, in paragraph 5 it is stated that on 24th January, 2000, his office had received a copy of the letter addressed by the Deputy Sarpanch of the Panchayat to the Block Development Officer, Ponda, requesting the Block Development Officer, to take steps to refund the amount of Rs.9,94,000/-, which was paid to the Government for the purpose of land acquisition. In paragraph 5 of the affidavit it is further stated that alongwith the said letter a copy of the resolution of the Gram Sabha dated 26th December, 1999, resolving to claim refund of the said amount was also annexed. The original letter has been produced by Shri Tamba, learned Additional Government Advocate. The said letter is addressed to the Revenue Minister and a perusal of the said letter shows that the Panchayat had requested for dropping of the acquisition proceedings and for refund of Rs.9,94,000/-. In the subsequent affidavit filed by the Government by Shri C. D. Gawade, Under Secretary (Revenue), Government of Goa, dated 9th February, 2004, in paragraph 13, it is stated that subsequent to the Notification, the Village Panchayat Usgao-Ganje had submitted a true copy of the

resolution passed in its meeting held on 26th December, 1999, stating that the land acquisition proposal for 10,000 sq.mts. for crematorium purposes at Usgao-Tisk shall be dropped and the amount of Rs.9,94,000/- deposited by the Panchayat with the Deputy Collector, Ponda, should be refunded and an alternate land of 3,000 sq. mts. be identified within the Village Panchayat.

4. We have heard learned counsel for the parties. According to us, it is not necessary to refer to the various facts and submissions advanced by the learned counsel for the parties. Shri Lobo, appearing on behalf of respondent no.4, has stated that the Village Panchayat of Usgao-Ganje is not interested in proceeding with the proposed acquisition of 10,000 sq mts. of the petitioner's land for the purpose of constructing a crematorium and the Village Panchayat has sought for refund of Rs.9,94,000/- deposited with the Government. In view of this statement, it is not necessary for us to decide the rival contentions in the petition. Since the Village Panchayat itself is not interested in proceeding with the proposed acquisition and has sought refund of the said amount, the petition deserves to succeed and Rule granted deserves to be made absolute.

5. Shri Sonak has very fairly stated that the petitioner undertakes not to claim any damages for the proceedings initiated for acquisition of his land, at the behest of the respondents. The said undertaking given on

behalf of the petitioner by the learned counsel is accepted by the Court.

6. Accordingly, the Writ Petition succeeds. Rule made absolute in terms of prayer clauses (a) and (aa), with no order as to costs.

P. V. HARDAS, J.

D. G. KARNIK, J.

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